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Attorneys for Non Party KLA-Tencor Corporation  
and John Kispert

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

KENNETH L. SCHROEDER,

Defendant.

Case No. 5:07-cv-03798 JW (HRL)

**DECLARATION OF THOMAS R. GREEN  
IN SUPPORT OF NON-PARTIES KLA-  
TENCOR CORPORATION'S AND JOHN  
KISPERT'S MOTION FOR A  
PROTECTIVE ORDER RE:  
DEPOSITIONS OF KLA WITNESSES**

DATE: MARCH 11, 2008  
[REQUESTED EXPEDITED HEARING ON  
FEBRUARY 12, 2008]  
TIME: 10:00 A.M.  
DEPT.: COURTROOM 2, 5TH FLOOR (SJ)  
JUDGE: MAGISTRATE JUDGE  
HOWARD R. LLOYD

I, Thomas R. Green, Esq., declare under penalty of perjury that:

1. I am an attorney with Morgan, Lewis & Bockius, LLP. I am licensed to practice in the state of California and I am an attorney for defendant KLA-Tencor Corporation ("KLA") and John Kispert. I have personal knowledge of the facts stated herein and, if called as a witness in this action, I could and would testify competently to the following facts.

2. Defendant Kenneth Schroeder ("Schroeder") has served subpoenas commanding

1-SF/7662349.1

1.

5:07-cv-03798 JW (HRL)

GREEN DECLARATION ISO OF KLA'S AND JOHN KISPERT'S MOTION FOR PROTECTIVE ORDER  
RE: DEPOSITIONS OF KLA WITNESSES

1 the deposition testimony of at least eight current and former KLA directors, officers and  
 2 employees in this matter ("KLA deponents"), none of whom are parties to this action, and all of  
 3 whom are commanded to appear for deposition by the end of March 2008. The subpoenaed  
 4 witnesses include Stuart Nichols, Lars Samson, Kenneth Levy, John Kispert, Ned Barnholt,  
 5 Maureen Lamb, Leslie Wilson and Gary Dickerson. Schroeder has since requested deposition  
 6 dates for an additional three current KLA employees, and indicated an intention to depose each of  
 7 them as quickly as possible. The next scheduled deposition is set for Thursday, February 14,  
 8 2008, when Schroeder intends to depose Kenneth Levy, the former Chairman and Chief  
 9 Executive Officer of KLA.

10 3. Since serving deposition subpoenas on the KLA deponents, Schroeder has filed a  
 11 motion to dismiss this action. Schroeder's motion, which he filed on February 1, 2008, is  
 12 scheduled to be heard on March 24, 2008.

13 4. It is my understanding that discovery in this matter is open until March 2009,  
 14 assuming no continuances are granted to conduct additional discovery after March 2009.

15 5. In light of the facts that Schroeder has a pending dispositive motion before the  
 16 Court and discovery does not close for more than a year, KLA requested that Schroeder postpone  
 17 deposing the KLA deponents until after the court has ruled on his motion to dismiss. I personally  
 18 participated in telephone conferences on February 4 and February 5 in which we made this  
 19 request to Ms. Shirli Weiss, counsel for Schroeder. Ms. Weiss rejected our request. On February  
 20 6, Ms. Weiss' co-counsel Jeffrey Coopersmith and I discussed KLA's motion a number of times,  
 21 primarily in connection with preparing the stipulation to have this motion heard on shortened  
 22 time. Mr. Coopersmith suggested to me that Schroeder may decide to take some of the motions  
 23 off calendar, but Schroeder has not committed to taking any depositions off calendar as of yet.  
 24 While Schroeder and KLA may make further efforts to resolve this matter without further action  
 25 by the Court, the pressing nature of Mr. Levy's deposition on February 14 required KLA to file  
 26 the present motion without further delay.

27 6. I have spoken to a few of the attorneys who represent the KLA deponents not  
 28 represented individually by Morgan Lewis. I anticipate that all former KLA witnesses

1 represented by separate counsel will join KLA's motion.

2           7. Even in the absence of Schroeder's motion to dismiss, good cause exists to  
3 postpone the depositions of the KLA deponents. Prior to noticing his motion to dismiss,  
4 Schroeder took his first deposition of a KLA deponent, deposing former KLA General Counsel  
5 Stuart Nichols on Sunday, January 27, 2008. The deposition lasted approximately seven hours,  
6 with a significant amount of the day consumed with Schroeder asking KLA's former General  
7 Counsel to testify regarding several communications and documents over which KLA asserts  
8 attorney client privilege and/or work product protection. KLA repeatedly instructed Mr. Nichols  
9 not to respond to such questions and counsel for Schroeder stated that she wanted to "make a  
10 clear record today of KLA's intentions with respect to instructions of witness so that we don't  
11 have to take more witness' depositions before we approach the court with these issues." KLA  
12 thus anticipates that Schroder will file a motion to compel challenging KLA's assertion of the  
13 privilege if his motion to dismiss is denied. I have participated in conference calls between  
14 counsel for Schroeder and KLA during which we have explained that it is KLA's position that  
15 any privilege issues should be resolved prior to further depositions of KLA witnesses if Schroeder  
16 intends to file a motion to compel further testimony where KLA asserts the privilege. We have  
17 explained that KLA intends to continue to assert the privilege in the same fashion that it did  
18 during the deposition of Stuart Nichols.

19           8. A true and correct copy of selected excerpts from the January 27, 2008 Nichols  
20 deposition is attached as Exhibit A to this declaration. The excerpts include page 9, which lists  
21 nearly 20 instances where Nichols was instructed not to respond to Schroeder's examination, and  
22 page 36 in which Ms. Weiss states that she intends to approach the court on the privilege issue  
23 prior to deposing further KLA witnesses.

24  
25           I declare under penalty of perjury under the laws of the United States of America that the  
26 foregoing is true and correct. Executed this 6th day of February, 2008, in San Francisco,  
27 California.

28                           **ATTESTATION PURSUANT TO GENERAL ORDER 45**

1 I hereby attest pursuant to General Order 45, section X.B, that I have on file all holograph  
2 signatures for any signatures indicated by a "conformed" signature (/S/) within this efiled  
3 document.

4  
5 /s/ Thomas R. Green  
6 Thomas R. Green  
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## **Exhibit A**

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

No. C 07-3798-JW

KENNETH L. SCHROEDER,

Defendant.

DEPOSITION OF STUART J. NICHOLS, Esq.

Sunday, January 27, 2008

VOLUME I (Pages 1-230)

SHEILA CHASE & ASSOCIATES

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Reported by:

JANIS JENNINGS, CSR, CRP

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Deposition of STUART NICHOLS, taken on behalf of the Defendant, at DLA PIPER, 2000 University Avenue, East Palo Alto, California, beginning at 9:48 A.M. on Sunday, January 27, 2008, before JANIS L. JENNINGS, Certified Shorthand Reporter No. 3942, CRP

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## A P P E A R A N C E S (Continued)

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For the Deponent:

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Also Present:

Margaret Austin, Paralegal  
 Gary Brewer, Videographer

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## A P P E A R A N C E S

For the United States Securities and Exchange Commission:

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 ELENA RO, ESQ.  
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For the Defendant Kenneth L. Schroeder:

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## I N D E X

DEPOSITION OF  
STUART NICHOLS

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Examination by Ms. Weiss 12

## E X H I B I T S

| No.        | Description  | Page |
|------------|--|------|
| Exhibit 41 | Comp Book; Nos. KT ACWP-PRIV00002541-2696                  | 10   |
| Exhibit 42 | Comp Book; Nos. KT ACWP-PRIV00002697-2893                  | 10   |
| Exhibit 43 | Computation Book; Nos. KT ACWP-PRIV00002894-3047           | 10   |
| Exhibit 44 | Computation Book; Nos. KT ACWP-PRIV00003048-3201           | 10   |
| Exhibit 45 | Computation Book; Nos. KT ACWP-PRIV00003202-3357           | 10   |
| Exhibit 46 | Computation Book; Nos. KT ACWP-PRIV00003358-3512           | 10   |
| Exhibit 47 | Computation Book; Nos. KT ACWP-PRIV00003513-3665           | 10   |
| Exhibit 48 | Computation Book; Nos. KT ACWP-PRIV00003666-3818           | 10   |
| Exhibit 49 | Computation Book; Nos. KT ACWP-PRIV00003819-3855           | 10   |
| Exhibit 50 | Email thread dated 10/12/99; Nos. MK-PRIV000046 through 47 | 65   |

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## I N D E X (Continued)

## EXHIBITS

| No.        | Description   | Page |
|------------|---|------|
| Exhibit 51 | Letter dated 10/18/99 to Stuart Nichols; Nos. MLB/KLA-SEC00016923 through 16924   | 65   |
| Exhibit 52 | Letter dated 10/7/99 to Stuart Nichols; Nos. MK0003340-341  | 65   |
| Exhibit 53 | New Hire Form, No. MLB/KLA-SEC00016905  | 65   |
| Exhibit 54 | Minutes of the Meeting of the Board of Directors of KLA-Tencor Corporation November 16, 1999; Nos. KLS-SEC002735 through 2739     | 81   |
| Exhibit 55 | Memo dated 1/5/00 from Stuart Nichols; Nos. KT ACWP-PRIV00004298 through 4304   | 114  |
| Exhibit 56 | Email thread from Stuart Nichols dated 1/6/2000; Nos. KTACWP-PRIV00004938 through 4940  | 124  |
| Exhibit 57 | Minutes of the Meeting of the Board of Directors KLA-Tencor Corporation January 25, 2000; Nos. MLB/KLA-SEC00021958 through 21961  | 132  |
| Exhibit 58 | Email thread from Leslie Wilson dated 1/22/00; Nos. MLB/KLA-SEC00051399 through 51400   | 133  |
| Exhibit 59 | Minutes of the Meeting of the Board of Directors of KLA-Tencor Corporation April 25, 2000; Nos. MLB/KLA-SEC00021983 through 21984 | 136  |
| Exhibit 60 | KLA-Tencor Historical Stock Prices; 20 pages  | 153  |
| Exhibit 61 | Email thread of Stuart Nichols dated 10/9/00; Nos. MLB/KLA-SEC00022981 through 22982  | 155  |

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## I N D E X (Continued)

## EXHIBITS

| No.        | Description  | Page |
|------------|--|------|
| Exhibit 62 | Minutes of the Meeting of the Board of Directors of KLA-Tencor Corporation Oct. 15, 2000; Nos. MLB/KLA-SEC00022086 through 22089 | 159  |
| Exhibit 63 | Employee Retention Stock Option Issue Oct. 30, 2000; Nos. KT ACWP-PRIV00002401 through 2415                                      | 160  |
| Exhibit 64 | Employee Retention Stock Option Program Proposal for the Compensation Committee; Nos. MLB/KLA-SEC00004879 through 4898           | 163  |
| Exhibit 65 | Minutes of the Meeting of the Board of Directors of KLA-Tencor Corporation Nov. 10, 2000; Nos. MLB/KLA-SEC00004903 through 4907  | 164  |
| Exhibit 66 | Minutes of the Meeting of the Compensation Committee of KLA-Tencor Corp.; Nos. MLB/KLA-SEC00004872 through 4876                  | 164  |
| Exhibit 67 | Minutes of the Meeting of the Board of Directors of KLA Instruments Corp. Apr. 28, 1997; Nos. MLB/KLA-SEC00050391 through 50458  | 193  |
| Exhibit 68 | Email thread from Joy Nyberg dated 3/12/01; No. MLB/KLA-SEC00052175  | 198  |
| Exhibit 69 | Email thread from Stuart Nichols dated 3/13/01; Nos. KT ACWP-PRIV00001924 through 1925   | 198  |
| Exhibit 70 | Email thread from Stuart Nichols dated 3/13/01; Nos. KT ACWP-PRIV00001903 through 1904   | 198  |
| Exhibit 71 | Email thread from Bret DiMarco dated 3/13/01; Nos. KLA-SEC000042 through 45  | 198  |

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## I N D E X (Continued)

## EXHIBITS

| No.        | Description  | Page |
|------------|--|------|
| Exhibit 72 | Email with attachment from Stuart Nichols dated 3/14/01; Nos. KT ACWP-PRIV00001905 through 1909      | 198  |
| Exhibit 73 | Email with attachment from Roger Stern dated 3/14/01; Nos. KT ACWP-PRIV00002365 through 2370         | 198  |
| Exhibit 74 | Email thread with attachment from Bret DiMarco dated 3/14/01; Nos. KT ACWP-PRIV00001328 through 2381 | 198  |
| Exhibit 75 | Email thread from Bret DiMarco dated 3/14/01; Nos. KT ACWP-PRIV00001327 through 2370                 | 198  |
| Exhibit 76 | Email thread with attachment from Selina Lopez dated 3/14/01; Nos. KT ACWP-PRIV00002371 through 2377 | 198  |
| Exhibit 77 | Memo from Stu Nichols dated 3/19/01; Nos. KT ACWP-PRIV00002391 through 2395                          | 198  |
| Exhibit 78 | Email thread from Stuart Nichols dated 3/22/01; No. MLB/KLA-SEC00050838                              | 198  |
| Exhibit 79 | Email thread from Stuart Nichols dated 3/22/01; No. KT ACWP-PRIV00001817                             | 198  |
| Exhibit 80 | Email thread from Roger Stern dated 3/22/01; No. KLA-SEC000007                                       | 198  |
| Exhibit 81 | Email thread from Stuart Nichols dated 3/22/01; No. KT ACWP-PRIV00002389                             | 198  |
| Exhibit 82 | Email thread from Stuart Nichols dated 3/22/01; Nos. KT ACWP-PRIV00002397 through 2399               | 199  |
| Exhibit 83 | Complaint  | 202  |

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## I N D E X (Continued)

## EXHIBITS

| No.        | Description  | Page |
|------------|--|------|
| Exhibit 84 | Stock Option Committee Procedures; No. MLB/KLA-SEC00022989 | 220  |

## QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER

|    | Page | Line |
|----|------|------|
| 10 | 43   | 11   |
| 11 | 109  | 21   |
| 12 | 112  | 24   |
| 13 | 118  | 1    |
| 14 | 119  | 9    |
| 15 | 120  | 4    |
| 16 | 122  | 11   |
| 17 | 127  | 5    |
| 18 | 128  | 4    |
| 19 | 128  | 13   |
| 20 | 131  | 18   |
| 21 | 135  | 23   |
| 22 | 140  | 3    |
| 23 | 142  | 6    |
| 24 | 155  | 7    |
| 25 | 164  | 8    |
|    | 167  | 15   |



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1 the Special Committee or the counsel acting for  
2 their members; is that correct?

3 MR. HEMANN: That's correct.

4 MS. WEISS: Is that the same instruction  
5 that you would make with respect to all of  
6 KLA-Tencor's current and former personnel?

7 MR. HEMANN: Yes.

8 MS. WEISS: Would that also be true  
9 with respect to the assertion of the work product  
10 doctrine with respect to all current and former  
11 inside attorneys of KLA-Tencor?

12 MR. HEMANN: Yes.

13 MS. WEISS: That is to say that to the  
14 extent that they met with the Special Committee,  
15 you would instruct them not to respond to my  
16 questions --

17 MR. HEMANN: Oh, I'm sorry. I'm sorry.  
18 I thought you were talking about Mr. Nichols'  
19 communications with attorneys for KLA-Tencor.

20 I would instruct Mr. Nichols not to -- I  
21 would advise Mr. Nichols that the company is taking  
22 the position that his communications with attorneys  
23 for KLA-Tencor, whether inside attorneys or outside  
24 attorneys, are protected by some combination of  
25 the attorney-client privilege and the attorney work

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1 product doctrine.

2 MS. WEISS: Okay. Right now I'm just on  
3 the Special Committee.

4 THE VIDEOGRAPHER: I'm sorry. Is your  
5 BlackBerry on?

6 MR. HEMANN: Yes. I can turn it off.

7 THE VIDEOGRAPHER: Somebody is starting to  
8 interfere with the audio.

9 MS. WEISS: You may actually have to put  
10 it remotely. I've had trouble with Blackberrys that  
11 are even off.

12 THE VIDEOGRAPHER: Thank you.

13 MS. WEISS: Okay. Mr. Hemann, what I'd  
14 like to do is, first of all, segregate the Special  
15 Committee. And I think you were clear about your  
16 instruction with respect to the attorney-client  
17 privilege.

18 I'm moving now to the work product  
19 protection. As to Mr. Nichols' communications with  
20 the Special Committee or the Special Committee's  
21 counsel, is it your instruction to him not to  
22 respond to questions on the grounds that asks for  
23 his communications to those personnel; the Special  
24 Committee or their counsel, on the grounds of the  
25 work product doctrine?

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1 MR. HEMANN: Yes.

2 MS. WEISS: And would it be your  
3 instruction to each of KLA-Tencor's current and  
4 former in-house counsel that they are not to respond  
5 to questions that I pose to them as witnesses  
6 regarding their communications with the Special  
7 Committee or its counsel on the basis of the work  
8 product doctrine?

9 MR. HEMANN: I think my comments and  
10 positions today are directed solely to Mr. Nichols.  
11 I'd be happy to talk to you after the deposition  
12 about other potential witnesses.

13 MS. WEISS: Well, Counsel, we'd like to  
14 make a clear record today of KLA's intentions with  
15 respect to instructions to witnesses so that we  
16 don't have to take more witness' depositions before  
17 we approach the court with these issues.

18 So these issues have been vetted over many  
19 weeks now. Are you not prepared to tell me what  
20 the company's position is with respect to other  
21 attorneys that I call as witnesses as far as the  
22 assertion of the attorney-client privilege and  
23 the work product doctrine is concerned?

24 MR. HEMANN: I'm prepared to meet and  
25 confer with you about other witnesses outside

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1 the context of Mr. Nichols' deposition.

2 MS. WEISS: Mr. Nichols --

3 MR. BELNICK: Can I just make a brief  
4 statement?

5 MS. WEISS: Please.

6 MR. BELNICK: Just to make clear, as  
7 I indicated both to you and Mr. Hemann and our  
8 communication before deposition when Mr. Hemann gave  
9 the instructions he described, Mr. Nichols, as a  
10 lawyer, former general counsel for KLA, obviously  
11 has fiduciary ethical and legal obligations and so  
12 he has no choice.

13 And I'm neither criticizing or applauding,  
14 but he obviously has no choice but to follow the  
15 instructions of KLA and its counsel, and therefore  
16 he will follow the instruction that Mr. Hemann just  
17 put on the record.

18 And if all or part -- or the substantial  
19 part of an answer would involve privileged or work  
20 product, I have no choice but to say "privilege";  
21 meaning he can't answer it. Not because he doesn't  
22 want to answer or I don't want him to answer, but  
23 because he has no choice as a lawyer other than to  
24 follow his former clients' request and direction.

25 MS. WEISS: I understand, Mr. Belnick.

10 (Pages 34 to 37)

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1 MS. WEISS: Well, that it's identified to  
 2 Lisa Berry, if you can --  
 3 MR. BELNICK: You have her initials in the  
 4 lower left.  
 5 MR. FICKES: That's fine with us. We can  
 6 stipulate to that.  
 7 MS. WEISS: Okay. So if you give me a few  
 8 minutes, I'll take a look at my exhibit list and see  
 9 what else we need to mark.  
 10 MR. BELNICK: I think you don't need to  
 11 mark anything else.  
 12 THE VIDEOGRAPHER: Off the record. The  
 13 time is 4:24 p.m.  
 14 (Off the record.)  
 15 THE VIDEOGRAPHER: We are back on the  
 16 record. The time is 4:38 p.m.  
 17 BY MS. WEISS:  
 18 Q. Mr. Nichols, I've asked you a number of  
 19 questions that I believe are germane to  
 20 Mr. Schroeder's defense in this lawsuit. And you  
 21 have been instructed not to respond to those  
 22 questions on the basis of privilege by counsel for  
 23 KLA Tencor, who holds the privilege. And,  
 24 therefore, I'm not going to proceed further at this  
 25 time. However, I'm going to leave the record open

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1 in order to assess our options with respect to the  
 2 instruction -- your instruction not to respond.  
 3 And so we are going to be requesting  
 4 another day of your deposition. Also the  
 5 commission, I'm sure, will be asking you questions,  
 6 however that turns out. And I will coordinate with  
 7 your counsel --  
 8 MR. BELNICK: That's fine.  
 9 MS. WEISS: -- for another day of  
 10 deposition. I'll also send your counsel copies of  
 11 the minutes that I believe you signed so that we can  
 12 have a stipulation as to those issues.  
 13 MR. BELNICK: Also acceptable.  
 14 MS. WEISS: And I thank you very much for  
 15 coming today. I know you have other things to do,  
 16 and we appreciate it.  
 17 THE WITNESS: That you all for doing this  
 18 on a Sunday to accommodate my schedule.  
 19 MS. WEISS: Certainly.  
 20 MR. FICKES: And -- I'm sorry. Just while  
 21 we're still on the record, you probably said this.  
 22 I just want to make sure we're all on the same page,  
 23 because of the timing and because the record will  
 24 remain open, that no one here is going to assert an  
 25 objection that the commission has waived its right

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1 to question the witness or to present the witness --  
 2 MR. BELNICK: That's correct. And I think  
 3 in fact Shirli mentioned that you may have questions  
 4 as well.  
 5 MR. FICKES: Okay.  
 6 MR. BELNICK: Certainly we're not going to  
 7 assert that objection on behalf of Mr. Nichols.  
 8 MS. WEISS: All right. We will adjourn  
 9 for today.  
 10 THE VIDEOGRAPHER: Okay. One moment,  
 11 please. This is the end of videotape No. 3, volume  
 12 1, in the deposition of Stuart Nichols. The  
 13 original videotapes will be retained by LiveNote  
 14 World Service. Going off the record. The time is  
 15 4:40 p.m.  
 16 (Whereupon, the deposition adjourned.)  
 17 --oOo--  
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## DECLARATION

1  
 2  
 3 I hereby declare under penalty of perjury that the  
 4 foregoing is my deposition under oath; that these are  
 5 the questions asked of me and my answers thereto; and  
 6 that I have read my deposition and have made the  
 7 corrections, additions, or changes to my answers that I  
 8 deem necessary.  
 9 In witness whereof, I hereby subscribe my name  
 10 this day of , 2007.  
 11  
 12  
 13  
 14

STUART NICHOLS

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1 CERTIFICATE OF REPORTER  
23 I, JANIS L. JENNINGS, a Certified Shorthand  
4 Reporter of the State of California, do hereby certify:5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth; that  
7 any witnesses in the foregoing proceedings, prior to  
8 testifying, were placed under oath; that a verbatim  
9 record of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; further, that the foregoing is an accurate  
12 transcription thereof.13 I further certify that I am neither  
14 financially interested in the action nor a relative or  
15 employee of any attorney of any of the parties.16 IN WITNESS WHEREOF, I have this date  
17 subscribed my name.  
1819 Dated: January 29, 2008.  
20  
2122 JANIS JENNINGS  
23 CSR NO. 3942  
24  
25

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